

Remarks

Claims 1-40 are pending in the application. No amendments have been made herewith. Reconsideration is respectfully requested.

Rejections Under 35 U.S.C. § 102

Claims 1-11, 18, 25-35, 39, and 40 were rejected under 35 U.S.C. § 102(b) as being anticipated by Beltrani et al. This rejection is respectfully traversed.

In making the rejection, the Examiner states with regard to the footwear structure of Beltrani:

[S]aid footwear structure being further comprised of a sole, defined as Part #16, with first and second lateral sides, and first and second flaps, defined as Part #67, that are each attached to one of said lateral sides, where said flaps are made of a conformable material, and are adapted to attach and detach from each other by means of hook and loop fasteners, as shown in Figure 25, in order to conform about a dorsal portions of a foot when attached to each other. Office action, at page 2 (emphasis added).

In response to the Examiner's contentions, Applicant submits that structure 67 of Beltrani (which is described as a strap in the Beltrani patent) is a part of the blade, not the footwear structure as the Examiner incorrectly recites in the Office action. The blade of Beltrani, part #2, has a strap 67, or flaps as referred to by the Examiner. Specifically, Belatrani states, "[t]he strap 67 is permanently secured to the area of the blade 2 beneath the user's foot..." Beltrani, col. 12, lines 50-52.

In contrast, in independent claims 1, 39, and 40 of the present invention, the flaps which are adapted to attach to and detach from each other and, in claims 1 and 39, to conform or wrap about a dorsal part of the foot are a part of

the footwear structure, *not the blade*. Therefore, for at least this reason the cited Beltrani reference fails to teach the present invention. Specifically, independent claim 1 recites, "said footwear structure including a sole having first and second lateral sides, a first flap attached to said first lateral side at a first side of said first flap, and a second flap attached to said second lateral side at a first side of said second flap..." Independent claim 39 recites, "said footwear structure including a sole having first and second lateral sides, a first flap attached to said first lateral side and a second flap attached to said second lateral side..." Independent claim 40 recites, "said footwear structure including a pair of flaps..."

Further, there is no suggestion to modify Beltrani such that part #67 (referred to as the flaps by the Examiner) of the blade are moved from the blade to the footwear structure. Specifically, with regard to structure 67 Beltrani states:

In the coupled condition, the user can desire a more rigid, more safe and firm connection with the blade 2. To this effect, and also to the aim of safety for absolutely excluding any possibility of accidental disengagement of the shoe 3 relative to the blade 2, as well as for ensuring a still better power transmission by the foot to the flipper 1, an optional additional holding system is contemplated, constituted for instance by an auxiliary open strap shown as 67 in Fig. 25, whose ends are provided with buckle or hook-and-loop fasteners. *The strap 67 is permanently secured to the area of the blade 2 beneath the user's foot, and is intended to be closed onto the foot after the coupling operation between the shoe 3 and the blade 2.* Beltrani, col. 12, lines 41-54 (emphasis added).

It is seen that Beltrani was concerned with providing a blade with a strap (or flaps as described by the Examiner) for coupling the blade to the footwear structure. Beltrani was not concerned with providing a *footwear structure* having a pair of flaps. Beltrani fail to provide a motivation or suggestion to modify the present invention such that the strap of Beltrani is moved from the blade to the footwear structure. Thus, Beltrani fail to anticipate or make obvious the present invention.

Also, for example, "with the footwear structure [of the present invention] a user need merely place his foot on the sole and wrap the flaps about his foot to wear the footwear structure. A user suffering from a painful foot condition will experience less pain when affixing the footwear structure to his foot than he would in 'putting on' a prior art swimming flipper shoe..." Applicant's specification, page 4, lines 4-11. Beltrani fail to contemplate such an advantage and for this additional reason fail to anticipate or make obvious the present invention.

Further, modification of the strap 67 of Beltrani involving moving the strap from the blade to the footwear structure would render a principle operation of the invention, namely securely coupling the blade and shoe, inoperable.

The M.P.E.P. states that "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious."

M.P.E.P. § 2143.01, 2100-132 (Rev. 2, May 2004) (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Here, as a principle of operation of Beltrani, namely securing the blade to the footwear structure with structure 67, would be changed with the modification, Beltrani does not render the claimed invention obvious.

Thus, for at least the reasons submitted above, Applicant submits that Beltrani fails to teach or suggest the present invention. Thus, Beltrani fails to render independent claims 1, 39, and 40 obvious or anticipated.

Claims 2-38 depend either directly or indirectly from claim 1 and are novel and non obvious over Beltrani for at least the same reasons provided above with regard to claim 1.

Conclusion

For at least the reasons submitted above, Applicant respectfully submits that the application is in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested.

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313.

Signed: Sally Azevedo
Typed Name: Sally Azevedo

Date: May 24, 2005

Respectfully submitted,



Gina McCarthy

Reg. No. 42,986

P.O. Box 2-E

San Jose, CA 95109-0005

(408) 297-9733